No. 87-577

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

ARDEN A. ANDERSON, *et al.*,
Petitioners,

vs.

THE STATE OIL AND GAS BOARD OF ALABAMA, *et al.*,
Respondents.

PETITIONERS' REPLY BRIEF

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Petitioners' submit this reply brief under Supreme Court Rule 22.5 to address the issues and arguments first raised in the briefs of respondents State Oil and Gas Board of Alabama (Board) and Getty Oil Company (Getty).

EFFECT OF ORDER NO. 83-170

Prior to the petition leading to the adverse ruling of the Board which led to this Petition for Writ of Certiorari, there was another petition involving the same subject matter. The Board and Getty attempt to attach importance to that fact.

They allege that because of the earlier petition (leading to Board Order No. 83-170[1]) the requests for discovery by Arden A. Anderson, et al. in the second petition were dilatory.

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[1] Appendix A of Getty's Brief in Opposition.

The effects of Board Order No. 83-170 on the petition giving rise to this action were argued interminably by Getty during the hearings and at all levels of appeal. However, neither the Board itself, nor three reviewing courts, used that Order to preclude issues or to deny Anderson relief.

Because the Board noticed into the record in the second hearings all the testimony introduced in the first hearings, that evidence was preserved; *but* the Board allowed all parties to put in new evidence to support or refute the evidence entered in the first hearings.

The Circuit Court of Tuscaloosa County by Writ of Mandamus, required the Board to hear Anderson's request for discovery, in the face of and despite Getty's defense that Order No. 83-170 precluded it.

The Circuit Court of Mobile County, on appeal, found as a fact[2] that over 90 days elapsed from Anderson's first request before the first day of substantive hearings, and that over 200 days elapsed before the Board ruled on the request.

The Court of Civil Appeals of Alabama, while finding that due process rights of Anderson had not been denied, did so on the single premise that

> ... [T]he required production of the information sought by appellees [Anderson] would not necessarily have changed the Board's decision.[3]

Nothing in Board Order No. 83-170 jurisdictionally precluded Anderson's requests, and the chronological facts do not establish any form of laches or inequitable conduct on the part of Anderson.

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[2] Petitioners' brief p. A-21

[3] Petitioners' brief p. A-11

DISCRETION IN DISCOVERY MATTERS

Both respondents, in an attempt to show that this is a narrow issue governed by discretion, make several assertions pregnant with context to mislead.

The Board wrote:

> Virtually all discovery requests filed by petitioner during the Board hearings were produced.[4]

Getty wrote:

> It must be remembered that this case involves a denial of a few out of many discovery requests - *not* a denial of discovery.[5]

These respondents apparently would have this Court to understand that Anderson was denied a select few of its requests, which was in the discretion of the Board. What they fail to state is that Anderson was never granted any *compulsory* discovery. And at the time, the Board in its history had never granted anyone *compulsory* discovery.

An enormous volume of information was fed in to the record, but *nothing* came from the files of Getty that *Getty* in *its* discretion didn't furnish voluntarily.

Getty replies, concerning Anderson's request for depositions:

> Regarding Petitioners' request for oral depositions, Getty voluntarily complied by making three witnesses available (BR 101097). Consequently, there was no need for the Board to order depositions to be taken.[6]

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[4] Board's brief p. 7

[5] Getty's brief p. 11

[6] Getty's brief p. 4

This statement has important omissions: a) that Getty partially complied, three months after the request, and only after the Circuit Court had issued Mandamus to the Board; b) that the "depositions" were closed to all other parties so that they could not be used as evidence in the hearings; and c) the documents requested for review at the "deposition" were previewed by Getty and culled to remove important papers.

As with all other purported "discovery" in this case, Anderson was able to see, hear and obtain only what *Getty* wanted Anderson to have and when *Getty* wanted them to have it.

To characterize that as "discovery" requires a novel definition of the word.

SUMMARY OF REPLY BRIEF ARGUMENT

It would be difficult to imagine a case more substantial; where the stake (four billion dollars) is greater; where the constitutional issue is more basic; where the petitioner more carefully preserved the right of review of the issue.

Respectfully submitted,

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